

## REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

### **I. Status of Claims**

Claims 1, 6, and 19 are amended currently. As amended, claim 1 incorporates salient recitations from original claim 5, which now is cancelled. Claims 6 and 19 are revised to correct grammatical errors, without addition of impermissible new matter. Claims 1, 6-11, 13-17, and 19-21 are pending, therefore, while claims 8-11 and 13-17 are withdrawn from consideration. Claims 1, 6, 7, and 19-21 are subject to examination on the merits.

### **II. Perfection of Priority Claim**

The instant application claims priority to JP 2002-154015, which was filed on June 5, 2002. Pursuant to 37 CFR § 1.55, applicants are preparing and shortly will submit a certified English language translation of the priority document.

### **II. Claim Objections**

The instant application claims priority to JP 2002-154015, which was filed on June 5, 2002. Pursuant to 37 CFR § 1.55, applicants are preparing and will submit a certified English language translation of the priority document upon receipt.

### **III. Claim Rejections under 35 USC § 103**

- (A) Claims 1, 7 and 19 are rejected over Vogels *et al.*, U.S. patent No. 6,492,169, in view of Bett, U.S. Publication No. 2004/0106194.
- (B) Claims 1, 5-7 and 19 stand rejected over Vogels and Bett in view of Wadell *et al.*, U.S. Publication No. 2004/0136958.
- (C) Claims 1, 7, and 19-21 are deemed by the examiner to be unpatentable over Vogels and Bett in view of Wadell *et al.*, U.S. Publication No. 2004/0136958.

In relation to each of rejections (A) - (C), the examiner seeks to substantiate her obviousness contention by combining Vogels, said to disclose "a deletion in the E1 region in which the vector is deficient in E1...while retaining the pIX promoter and the pIX gene,"

with Bett, which is cited for teaching "an Ad35 vector comprising a deletion in the E1 region in which the vector is deficient in E1 as well as deletion in the E3 region." Office Action at page 3, lines 16-20, and at page 5, lines 12-13, respectively. As to rejection (B), the examiner also invokes Wadell, albeit without stating any reason for citing that reference. Finally, as to rejection (C) the Examiner combines Vogels and Bett with Wadell, which is said to disclose "that Ad35 has high tropism for CD34+ cells." *Id.* at page 7, line 11.

Having perfected their claim to priority, however, applicants have established an effective filing date that is earlier than the art-effective dates of the Bett and Wadell cited publications. The Bett and Wadell publications are not competent references against the present claims, therefore, and so applicants request withdrawal of these rejections.

Amended claim one currently recites deletions in the adenoviral vector that abrogate E1 and E3 gene function but that preserve the beneficial pIX region. The examiner acknowledges that Vogels fails to disclose E3 deletions, and no competent reference cures this deficiency. Accordingly, applicants request this rejection be withdrawn.

### CONCLUSION

Applicants submit that the present application is in condition for allowance, and an early indication to that effect is requested. Examiner Marvich is invited to contact the undersigned directly should she feel that any item warrants further consideration.

Respectfully submitted,

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The Commissioner is hereby authorized to charge any additional fees, which may be required under 37 CFR §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extension is needed for timely acceptance of submitted papers, then Applicant hereby petitions for such extension under 37 CFR § 1.136 and authorizes payment of the relevant fee(s) from the deposit account.